



## Australia

### Country Reports on Human Rights Practices - [2004](#)

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Australia is a constitutional democracy with a federal parliamentary government. Citizens periodically choose their representatives in free and fair multiparty elections. John Howard began his fourth consecutive term as Prime Minister in October; his Liberal and National Party Coalition Government held 87 of the 150 seats in the lower house of the Federal Parliament. The judiciary is independent.

The Federal Justice Ministry oversees Australian Federal Police (AFP) activities, while the state police forces report to the respective state police ministers. The civilian authorities maintained effective control over the security forces. There were occasional reports that police committed human rights abuses.

The country has a mixed, highly developed, market-based economy. Its population was approximately 20.1 million as of June. Per capita gross domestic product growth was 3.2 percent for the 12-month period ending September 30. Wages and benefits growth generally exceeded inflation. Strong regional demand for the country's mineral exports largely offset the dampening economic effects of low agricultural production due to a prolonged nationwide drought and the appreciating Australian dollar.

The Government generally respected the human rights of its citizens, and the law and judiciary provide effective means of addressing individual instances of abuse; however, there were problems in some areas. There were occasional reports that police and prison officials abused persons in custody. Human rights organizations, refugee advocacy groups, and opposition politicians continued to express concern about the impact of prolonged mandatory detention on the health and psychological well-being of asylum seekers. Societal violence and discrimination against women, discrimination against Aboriginal people, and trafficking in persons also were problems that the Government was taking steps to address. Some leaders in the ethnic and immigrant communities and opposition political party members expressed continued concern about instances of vilification of immigrants and minorities. There was ongoing criticism of the 1996 Federal Workplace Relations Act by domestic labor unions and the International Confederation of Free Trade Unions, particularly in regard to the law's curbs on trade unions, restrictions on strike action, and emphasis on individual employment contracts.

#### RESPECT FOR HUMAN RIGHTS

##### Section 1 Respect for the Integrity of the Person, Including Freedom From:

###### a. Arbitrary or Unlawful Deprivation of Life

There were no reports of the arbitrary or unlawful deprivation of life committed by the Government or its agents. However, the Australian Institute of Criminology (AIC), an agency of the Attorney General's Department, reported that in 2003, 29 persons died in police custody or in the process of arrest, 6 fewer than the revised total of 35 in 2002. Police shot and killed three persons; all three shootings were found to be justifiable. The circumstances of two deaths in police custody were not established by year's end. In the remaining cases, 11 deaths were attributed to accidents, 9 to self-inflicted injuries, and 4 to natural causes. Of seven Aboriginal deaths in police custody, four resulted from accidents, two from natural causes, and one from self-inflicted injuries.

During 2003, a Western Australian (W.A.) independent commission inquired into allegations of police corruption and criminal conduct, including the unresolved 1988 death in police custody of an 18-year-old youth; Amnesty International (AI) had called for an investigation of the death. In March, the commission released its report on the W.A. police service, finding no evidence that police had assaulted the youth.

#### b. Disappearance

There were no reports of politically motivated disappearances.

#### c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The law prohibits such practices; however, there were occasional reports that police and prison officials mistreated suspects in custody. Some indigenous groups charged that police harassment of indigenous persons was pervasive and that racial discrimination by some police and prison custodians persisted (see Section 5).

Prison conditions generally met international standards, and the Government permitted visits by independent human rights observers. Each state and territory is responsible for managing its own prisons, which also house federal prisoners. There are no federal prisons. While Aboriginals constituted less than 3 percent of the population, they accounted for 20 percent of the prisoner population as of June 2003 (see Section 5).

In prisons, men and women were held separately; conditions were the same for both. Pretrial detainees generally were segregated from convicted prisoners. Juvenile offenders under age 17 generally were incarcerated in youth detention or training centers but could be sentenced to custody in an adult prison upon conviction of a serious criminal offense such as homicide. In immigration detention facilities, children were held with adults, most often family members (see Section 2.d.).

According to the AIC's annual report on prison deaths, 39 persons died in prison custody in 2003. Of these, 20 deaths were attributed to self-inflicted injuries and 17 to natural causes. The remaining two deaths were categorized as "unlawful homicides" (murder or manslaughter). The report did not distinguish between prisoner-instigated and guard-instigated homicides.

In 2003, a foreign fisherman died after being detained by authorities for weeks aboard a boat in the Darwin harbor. In March, the Northern Territory (N.T.) coroner found that, although the man died from natural causes, the facilities on the boat where he was held were inadequate and hampered the provision of emergency medical treatment. In December, the Government announced that it would cease its practice of detaining on their boats fishermen found illegally fishing in the country's waters.

#### d. Arbitrary Arrest or Detention

The law prohibits arbitrary arrest and detention, and the Government generally observed these prohibitions.

Each of the country's six state and two territorial jurisdictions has a separate police force, which enforces state and territorial laws. The Federal Police enforce Commonwealth laws. The police forces generally do not have problems with corruption and impunity. State and territorial police forces have internal affairs units that investigate allegations of misconduct, and a civilian ombudsman's office that either can review an investigation upon request of the complainant or initiate its own inquiry into a complaint.

Police officers may seek an arrest warrant from a magistrate when a suspect cannot be located or fails to appear; however, they also may arrest a person without a warrant if there are reasonable grounds to believe the person has committed an offense. Police must inform arrested persons immediately of their legal rights and the grounds for their arrest. The arrested person must be brought before a magistrate for a bail hearing at the next sitting of the court. Bail generally is available to persons facing criminal charges unless the person is considered to be a flight risk or is charged with an offense carrying a penalty of 12 months' imprisonment or more. Attorneys and families were granted prompt access to detainees.

Unlike in past years, there were no reports of the indefinite detention, while awaiting deportation, of immigrant felons who already had completed their sentences.

In April 2003, the Federal Court of Australia ruled that continued detention of asylum seekers when there was no real likelihood of the detainee being removed was unlawful; however, in August, the High Court overturned the Federal Court decision, ruling that the Government had the authority to detain asylum seekers, including children, indefinitely (see Section 2.d.). During the year, some detainees in immigration detention facilities undertook brief hunger strikes to draw attention to their prolonged detention (see Section 2.d.).

#### e. Denial of Fair Public Trial

The Constitution provides for an independent judiciary, and the Government generally respected this provision in practice.

The court system is divided into federal, state, and territorial courts, which handle both civil and criminal matters. The highest federal court is the High Court, which exercises general appellate jurisdiction and advises on constitutional issues. State and territorial supreme, district, and county courts conduct most major criminal and civil trials, while the magistrates' and specialists' courts (such as the children's court and administrative tribunals) adjudicate less serious criminal and civil cases and conduct preliminary hearings.

The law provides for the right to a fair trial, and an independent judiciary generally enforced this right. In the state district or county courts and the state or territorial supreme courts, there generally is a judge and jury. The judge conducts the trial, and the jury decides on the facts and on a verdict. Defendants have the right to an attorney, and a government-funded system of legal aid attorneys is available to low-income persons. The defendant's attorney can question witnesses, present evidence on the defendant's behalf, and access relevant government-held evidence. Defendants enjoy the presumption of innocence and have the right to appeal the court's decision or the sentence imposed.

There were no reports of political prisoners.

#### f. Arbitrary Interference with Privacy, Family, Home, or Correspondence

The law prohibits such actions, and the Government generally respected these prohibitions in practice.

### Section 2 Respect for Civil Liberties, Including:

#### a. Freedom of Speech and Press

The law provides for freedom of speech and of the press, and the Government generally respected these rights in practice and did not restrict academic freedom. An independent press, an effective judiciary, and a functioning democratic political system combined to ensure freedom of speech and of the press.

In December, the Victorian Civil and Administrative Tribunal upheld a 2003 complaint by the Islamic Council of Victoria (ICV) that two Christian pastors and their ministry had vilified Muslims in 2002; however, the court postponed sentencing (see Section 2.c.). The defendants maintained that their speech was protected under the Constitution.

The independent media were active and expressed a wide variety of views without restriction.

The Government did not restrict Internet access.

#### b. Freedom of Peaceful Assembly and Association

While the right to peaceful assembly is not codified in law, citizens exercised it without government restriction.

There is no explicit right to freedom of association; however, the Government generally respected this right in practice.

#### c. Freedom of Religion

The law provides for freedom of religion, and the Government generally respected this right in practice.

On January 5, anti-Semitic slogans were burned into the lawns of the Parliament House in the state of Tasmania. Police launched an investigation and a public appeal for information; however, they subsequently ended their active investigation due to a lack of sufficient evidence to make any arrests in the case.

In February, the Federal Parliament condemned racism against the Jewish community following publication of an Executive Council of Australian Jewry report that noted a large increase in anti-Semitic incidents in recent years. The parliaments of the two most populous states, New South Wales (N.S.W.) and Victoria, also passed motions

condemning anti-Semitism. In the 12-month period ending September 30, the Council recorded 440 anti-Semitic incidents, a 9 percent decrease from the number recorded in the previous 12 months. The incidents ranged from property damage and/or assaults (37 reports) to harassment and offensive written and electronic media. The Council recorded an annual average of 279 incidents since reports were first compiled in 1989.

In 2003, the ICV filed a complaint under Victoria's Racial and Religious Tolerance Act against two Christian pastors and their ministry organization, who it alleged had vilified Muslims. In late 2003, the Victoria administrative tribunal rejected the defendants' argument that the case was outside the tribunal's jurisdiction. In December, the tribunal upheld the ICV's complaint, finding that the two pastors had presented media about Muslims that was "essentially hostile, demeaning and derogatory of all Muslim people and Muslim religious beliefs and practices," but the judge postponed sentencing. As of year's end, the respondents had not appealed the tribunal's decision to a higher court.

For a more detailed discussion, see the [2004 International Religious Freedom Report](#).

#### d. Freedom of Movement Within the Country, Foreign Travel, Emigration, and Repatriation

The law provides for these rights, and the Government generally respected them in practice.

Neither the Constitution nor the law addresses exile; however, the Government did not use it.

The law provides for the granting of asylum or refugee status in accordance with the 1951 U.N. Convention Relating to the Status of Refugees or its 1967 Protocol. The Government has established a system for providing protection to refugees subject to certain geographic and time constraints on claims by those who previously sought asylum in a safe country of transit. In practice, the Government provided protection against refoulement, the return of persons to a country where they feared persecution. The Government granted refugee status or asylum.

The Government cooperated with the office of the U.N. High Commissioner for Refugees and other humanitarian organizations in assisting refugees.

The Government sets an annual quota on the number of protection grants it makes. In the 12-month period ending June 30, the Government granted 13,851 humanitarian class visas, which included an offshore resettlement component of 11,802 visas (for persons resettled in the country) and an onshore component of 2,049 visas (for persons already in the country who were granted asylum). The program's offshore component was made up of 4,134 refugees (including 393 grants to women found to be at risk in overseas refugee camps) and 7,668 special humanitarian grantees. Special humanitarian grantees were displaced persons subjected to gross violations of human rights, and whose applications were supported by residents or organizations based in the country. Of the total number of offshore grants, 71 percent came from Africa, 24 percent from the Middle East and Southwest Asia, 3 percent from Europe, and 2 percent from other regions.

Noncitizens arriving at a national border without prior entry authorization automatically are detained. Legal assistance is provided upon request to detainees making an initial asylum claim or application for lawful residence. Individuals may be released pending full adjudication of their asylum claim only if they meet certain criteria such as old age, ill health, or experience of torture or other trauma. However, most did not meet release criteria and were detained for the length of the asylum adjudication process. They were either released upon receiving asylum and an appropriate visa or removed once it was determined that they did not qualify for protection. The Federal Government oversaw six immigration detention facilities and one residential housing detention facility within the country. During the year, asylum seekers intercepted at sea also were housed in offshore detention centers, administered by the International Organization for Migration with funding from the Government, in Nauru and on Manus Island in Papua New Guinea. As of December, onshore detention facilities, including Christmas Island, held 951 detainees, and the offshore detention facility in Nauru held approximately 80 detainees, most of whom had been denied refugee status and were awaiting repatriation. In May, the sole remaining occupant of the Manus Island center was granted a temporary protection visa and released. The Government continued to resettle those detainees granted refugee status.

In 2001, in response to an influx of boats carrying asylum seekers, Parliament changed the law to remove retroactively the right of any noncitizen to apply for a permanent protection visa (i.e., the right to live and work permanently in the country as a refugee) if that person's entry was unlawful and occurred in one of several "excised" territories along the country's northern arc: Christmas Island, Ashmore and Cartier Islands, the Cocos Islands, and any sea or resource installation designated by the Government.

Noncitizens who arrive by boat and have their asylum claims confirmed are granted a 3-year temporary protection

visa (TPV), which provides full access to medical and social services but does not authorize family reunification or allow travel abroad with reentry rights. A permanent protection visa, which gives authority for family reunification and reentry rights, may be granted to an applicant at any stage of the asylum adjudication process. Denials of asylum claims may be appealed on merit grounds to the Refugee Review Tribunal, and on grounds of legal error to the Federal Court of Australia and, in certain cases, to the High Court. The Minister for Immigration and Multicultural and Indigenous Affairs may exercise discretion and grant a visa after the asylum seeker has exhausted the review process. In July, the Minister invited 9,500 TPV holders to apply for permanent visas without requiring them to leave the country to make their applications.

Long delays in processing asylum applications were not a significant problem during the year; however, a small number of asylum seekers remained in detention, some for years, despite having exhausted the appeal process. They could not be returned to their home country because they lacked travel documents or could not obtain necessary transit visas. In July, the High Court overturned the Federal Court of Australia's 2003 ruling that the indefinite detention of asylum seekers was unlawful.

The country's immigration laws and detention policy continued to be criticized by human rights and refugee advocacy groups, which charged that the sometimes-lengthy detentions violated asylum seekers' human rights.

As of July, 59 children were held in onshore immigration detention centers, and an additional 33 were held on Nauru. In April, the High Court overturned the Family Court's 2003 ruling that, under the U.N. Convention on the Rights of the Child, Family Court jurisdiction extended to children in detention. In 2003, the Family Court had ordered that five Pakistani children should be released from detention and placed into the care of a charitable welfare group. Following the High Court's April decision, the Immigration Minister deputized the charitable group's staff as detention officers so that the children could remain in their care.

In May, the government-funded, but independent, Human Rights and Equal Opportunity Commission (HREOC) published the findings of its 2-year investigation into children in immigration detention. The report concluded that the country's laws requiring child asylum seekers to be held in mandatory immigration detention breached the U.N. Convention on the Rights of the Child, to which the country is a party. The Government rejected the commission's major findings and recommendations as "unbalanced" and "backward looking."

There were no reports of the forced return of persons to countries where they feared persecution, before their asylum claims were considered and rejected. However, in 2003 and during the year, refugee, church, and human rights groups expressed concern about the Government's practices in repatriating unsuccessful asylum seekers.

The Government has agreements with a number of countries under which unsuccessful asylum claimants may be returned involuntarily to their home countries. In 2003, a church human rights and refugee advocacy group released an interim report on both voluntary and involuntary returnees; it stated that many had disappeared or died in their home country. The Government rejected the group's assertions, stating that they could not be independently verified. The group also raised its allegations during a parliamentary committee meeting in 2003; however, the committee did not respond. In September, the group raised the issue again in its final report on the country's treatment of asylum seekers. The Government agreed to consider the report; however, a government spokesperson reportedly stated that the group appeared to be repeating its 2003 claims, which the Government already had rejected.

### Section 3 Respect for Political Rights: The Right of Citizens to Change Their Government

The Constitution provides citizens with the right to change their government peacefully, and citizens exercised this right in practice through periodic, free, and fair elections held on the basis of universal suffrage and mandatory voting. In October, citizens elected a coalition of the Liberal Party and the National Party to a fourth 3-year term of office. The opposition Australian Labor Party (ALP) won all six state and territorial elections held in 2002 and 2003 and was reelected to government in Queensland and the Australian Capital Territory during the year; at year's end, the ALP controlled all eight state and territorial legislatures.

The federal, state, and territorial governments have freedom of information (FOI) laws, which provide the public with access to government information. FOI requests generally are subject to both an application and a processing fee. Federal law enables a person to access and correct inaccurate personal information held by government ministries and agencies, and to access other government information that has not been exempted to protect essential public interests or the private or business affairs of others. An applicant, including foreign media, may appeal a government decision to deny a request for information to the quasi-legal Administrative Appeals Tribunal (AAT); an adverse AAT decision may be appealed to the Federal Court of Australia.

There are no legal impediments to public office for women and indigenous people. Both the Government and the opposition have declared their intent to increase the numbers of women elected to public office. As of October, there were 57 women in the 226-seat Federal Parliament, 3 female ministers in the 17-member Federal Government Cabinet, and 6 female ministers in the 30-member Federal Government Ministry. There was one woman among the eight Premiers and Chief Ministers of the six states and two territories, the Chief Minister of the Northern Territory (N.T.).

Aboriginals generally were underrepresented among the political leadership (see Section 5). The sole Aboriginal Senator was not reelected in October; his term will expire on June 30, 2005. No Aboriginals were elected to the Federal Parliament during the year. In 2002, an Aboriginal woman was elected to the Tasmanian state parliament and another was elected to the N.S.W. state parliament. In 2001, an Aboriginal woman was elected to the W.A. state parliament (the first indigenous woman to be elected to a state legislature) and four Aboriginals, including a woman, were elected to the N.T. legislative assembly.

The first Chinese-born Senator was elected to the Federal Parliament in 1998, but did not run for reelection in October; his term will expire on June 30, 2005.

#### Section 4 Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights

A wide variety of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. The Government in general cooperated with human rights groups.

The government-funded, but independent, HREOC investigates complaints of discrimination or breaches of human rights under the federal laws that implement the country's human rights treaty obligations. HREOC resolves complaints in relation to employment, provision of goods and services, access to accommodation, and inciting racial hatred. Each state and territory has its own antidiscrimination board or equal opportunity commission that also resolves complaints of discrimination. In the 12 months ending June 30, the number of discrimination complaints received by HREOC fell to 1,113, a decrease of approximately 10 percent from the 1,271 complaints received in the previous 12-month period. Approximately 51 percent of all cases were not accepted, either because they did not fall within HREOC's mandate or because no discrimination was shown. Another 38 percent were resolved through conciliation, and 10 percent were withdrawn before action could be taken.

#### Section 5 Discrimination, Societal Abuses, and Trafficking in Persons

Federal laws prohibit discrimination based on sex, disability, race, color, descent or national or ethnic origin, marital status, or age. An independent judiciary and a network of federal, state and territorial equal opportunity offices effectively enforced the law.

##### Women

The law prohibits violence against women, including spousal rape and abuse; however, violence against women remained a problem. In 2002, there were 17,850 victims of sexual assault recorded by the police. According to the Australian Bureau of Statistics (ABS), sexual assaults increased nearly 6 percent compared with 2001; the victims in 80 percent of the cases were female. In 2002, the sexual assault victimization rate was 91 per 100,000 persons, the highest number since statistics first were recorded in 1993. Domestic violence was particularly prevalent in Aboriginal communities.

All states and territories except W.A. have enacted legislation making it a crime to perform female genital mutilation (FGM) or to remove a child from the jurisdiction for the purpose of having FGM performed; maximum penalties range from 7 to 21 years' imprisonment. The N.S.W. Women's Minister revealed that 40 women had been treated for the effects of FGM in the 12 months ending November 30, 2003. There were no reports of new cases or prosecutions for the offense during the year.

Prostitution is legal or decriminalized in several states and territories, and the governments of Victoria, Queensland, and the Australian Capital Territory license brothels operating within their borders. However, many brothels operated illegally. In some locations, state-funded sexual health services employees visited brothels to educate workers about sexual health matters and to prevent worker mistreatment. Local governments or prostitution licensing authorities inspected brothels to assure compliance with planning laws and licensing requirements, including health and safety regulations. However, government officials faced difficulties enforcing health and safety

standards in illegal brothels. Trafficking in persons, primarily women from Asia, for prostitution was a limited problem (see Section 5, Trafficking).

The Sex Discrimination Act prohibits sexual harassment. The independent Federal Sex Discrimination Commissioner, which is part of HREOC, undertakes research, policy, and educational work designed to eliminate discrimination between men and women.

According to the HREOC July 2003-June 2004 annual report, sex discrimination complaints fell by 7 percent during the reporting period compared with the previous reporting period. Of the 353 new cases filed during the reporting year, women filed 86 percent and 88 percent were employment related.

The Office for Women (OFW), formerly the Office of the Status of Women, monitors women's rights and advises the Federal Government on issues affecting women. In October, the OFW published a report on domestic violence, entitled "The Cost of Domestic Violence to the Australian Economy," which found that domestic violence cost the economy \$6 billion (A\$8.1 billion) in the 12-month period from July 2002 to June 2003. The report ranked domestic violence among the top five risks to women's health.

There were highly organized and effective private and public women's rights organizations at the federal, state, and local levels.

Women have equal status under the law, and the law provides for pay equity. In June, the ABS estimated that women's full-time total average weekly earnings were 82 percent of men's.

## Children

The Government demonstrated its strong commitment to children's rights and welfare through its publicly funded educational and medical care systems. While the structure of education varied among states and territories, all children between 6 and 15 years of age are entitled to 9 to 10 years of compulsory and free education. A 2002 ABS survey found that the full-time school participation rate for 15-year-olds was 92.5 percent. The Government provided universal health insurance coverage to all citizens and lawful residents from birth on a copayment basis. The Government also provided a minimum benefit of 16.8 percent of the cost of a first child's childcare to all parents (with a smaller benefit for additional children), which increased to as much as 100 percent for the lowest income families.

State and territorial child protection agencies investigate and institute prosecutions of persons for child neglect or abuse. The Federal Government's role in child abuse prevention is limited to funding research and education campaigns, developing an action plan against the commercial exploitation of children, and funding community-based parenting programs. According to the Federal Department of Family and Community Services, the number of substantiated cases of child abuse and neglect grew approximately 43 percent from 1992 to 2002. In January, the Queensland Crime and Misconduct Commission (CMC) issued a report on its investigation into allegations of mismanagement within the state children's services department and neglect of foster children placed by the department. It found that the allegations were substantiated and called for the creation of a separate child safety administration. The Queensland government accepted all of the CMC report's recommendations and announced a \$115 million (A\$154 million) budget increase to implement the recommendations.

The Government has enacted tough criminal laws aimed at restricting the trade in, and possession of, child pornography; the law allows suspected pedophiles to be tried in the country regardless of where the crime was committed. The Child Sex Tourism Act prohibits child sex tourism and related offenses for the country's residents and citizens overseas and provides for a maximum sentence of 17 years' imprisonment upon conviction. Since 1994, 19 persons have been charged under the act; as of December 10, there were 13 convictions, 3 dismissals, and 3 ongoing cases. During the year, the Government continued its awareness campaign to deter child sex tourism, through the distribution of materials to citizens and residents traveling overseas. Child protection NGOs raised community awareness of child trafficking. There were no reports of children being trafficked into the country during the year (see Section 5, Trafficking).

The practice of parents unlawfully sterilizing children with disabilities was a continuing problem. The High Court has determined that physicians who sterilized a child without authorization from the federal Family Court would be subject to criminal and civil action. In 2002, a report into the sterilization of girls and young women with disabilities, commissioned by the federal Sex Discrimination Commissioner, found that the official data were unreliable and that anecdotal evidence suggested that girls continued to be sterilized in numbers that far exceeded the number of lawful authorizations.

In April, the High Court overturned a 2003 ruling by the Family Court that the Family Court's jurisdiction extended to children in immigration detention facilities (see Section 2.d.).

### Trafficking in Persons

The law prohibits trafficking in persons, but the country continued to be a destination for some trafficked women in the sex industry.

Legislation enacted in 1999 targets criminal practices associated with trafficking, and other laws address smuggling of migrants. Under the Federal Migration Act, smuggling of persons in all forms is prohibited and carries a maximum penalty of 20 years' imprisonment. The 2001 Border Protection Act authorizes the boarding and searching in international waters of vessels suspected of smuggling or trafficking in persons. In 2002, the Commonwealth Criminal Code was modified to provide for sentences of up to 20 years' imprisonment for "people smuggling" aggravated by exploitation. Under the Commonwealth Criminal Code, conduct that amounts to slavery, or exercising a power of ownership over another person, carries a maximum penalty of 25 years' imprisonment. Under the Child Sex Tourism Act, it is an offense for citizens or residents to travel abroad to engage in sex with minors under 16 years of age (see Section 5, Children).

In 2003, 10 persons appeared in court on trafficking in persons offenses in 3 separate cases, but the court had not issued its decisions in the cases as of year's end. During the year, four additional persons were charged with trafficking in persons offenses in two separate cases; both cases were pending at year's end.

The Department of Immigration and Multicultural and Indigenous Affairs, the Australian Customs Service, and the AFP have lead roles in combating trafficking in persons. The AFP's Transnational Sexual Exploitation and Trafficking Team, a 23-member mobile strike force established under the Government's 2003 national action plan for eradicating trafficking in persons, is responsible for investigating trafficking syndicates operating in the country and abroad. State police forces worked closely with the AFP to develop a comprehensive policing strategy to counter the crime of trafficking in persons.

Some women, primarily from China and Southeast Asia, were brought into the country for the purpose of prostitution, sometimes entering with fraudulently obtained tourist or student visas. Many of these women traveled to the country voluntarily to work in both legal and illegal brothels, but some reportedly were deceived or coerced into debt bondage or sexual servitude. Authorities believed that sex trafficking networks were composed primarily of individual operators or small crime groups that often relied on larger organized crime groups to procure fraudulent documentation for the trafficked women. In June, a federal parliamentary committee issued a report on its yearlong inquiry into the national criminal intelligence agency's response to sex trafficking and the adequacy of federal antitrafficking laws. The report recommended that the Government broaden the criminal code to include nonsexual forms of compulsory labor and hasten its ratification of the U.N.'s trafficking protocol. The report noted wide variations in NGO estimates of the number of trafficked women; while it was unable to provide definitive numbers, the report estimated that a "relatively small" number among an estimated 300 women who travel to the country for work in the sex industry each year were subjected to sexual servitude. In response to the report, the Government restated its commitment to eradicate sex trafficking and take action on the report's recommendations.

In 2002, the Government established the position of Ambassador for People Smuggling Issues, with responsibility for promoting a coherent and effective international approach to combating trafficking in persons (particularly in the Asia-Pacific region), assisting in the negotiation of international agreements for the return and resettlement of persons brought illegally into the country, and working for the prosecution of traffickers in persons. The Ambassador coordinates the country's participation in the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime, which Australia and Indonesia jointly established in 2002. In 2003, the Government signed antitrafficking agreements with Cambodia, Burma, Laos, and Thailand to improve international cooperation and police investigations of trafficking syndicates. The Government also funded awareness campaigns in source countries. In 2003, the Government also began funding the \$6.4 million (A\$8.5 million) Asia Regional Cooperation to Prevent People Trafficking project. Underway in four countries--Thailand, Laos, Burma, and Cambodia--the project focused on strengthening the criminal justice process to combat trafficking in persons.

In October 2003, the Government launched its national Action Plan to Eradicate Trafficking in Persons, which included additional antitrafficking legislation, enhanced cooperation among other countries and state and local law enforcement authorities, new visa procedures to facilitate the cooperation of trafficking victims with law enforcement personnel, and additional social services for victims. The Government also took significant steps to improve efforts by police and immigration officials to distinguish trafficking victims from illegal migrants and to provide victims with assistance, including counseling and temporary shelter. Victims willing to cooperate with authorities to investigate



and prosecute traffickers qualify for a temporary visa and a range of social services.

Within the country, the Government began an awareness campaign targeting the sex industry and the community at large and widely publicized criminal cases against traffickers.

There were no NGOs devoted solely to trafficking victims. Nonetheless, assistance was available through NGOs that ran shelters for women and youth; sex worker organizations; the NGO Project Respect, which assisted women to escape prostitution and combated sex trafficking of women; and Childwise, which campaigned against the commercial sexual exploitation of children in the country and through sex tourism overseas. Some NGOs received government funding; others were funded privately. Local NGOs and the press were instrumental in bringing to the authorities' attention the presence of illegal migrant women and girls in brothels and massage parlors, and raising public awareness of the problem.

#### Persons with Disabilities

The law prohibits discrimination against persons with disabilities in employment; education; access to premises; provisions of goods, services (including health services), and facilities; accommodation; purchase of land; activities of clubs and associations; sport; and the administration of federal laws and programs, and the Government effectively enforced the law. The Disability Discrimination Commissioner, which is part of HREOC, promotes compliance with federal laws that prohibit discrimination against persons with disabilities. The Commissioner also promotes implementation and enforcement of state laws that require equal access and otherwise protect the rights of persons with disabilities. The law also provides for mediation by HREOC of discrimination complaints, authorizes fines against violators, and awards damages to victims of discrimination.

The 2004 HREOC report stated that 483 disability complaints were filed during the July 2003-June 2004 reporting year, including 201 complaints of discrimination based on physical disability, 122 complaints of discrimination based on psychiatric disability, and 33 complaints based on learning disabilities. Of these, 54 percent were employment related and 25 percent concerned the provision of goods and services. The practice of parents unlawfully sterilizing children with disabilities was a continuing problem (see Section 5, Children).

#### National/Racial/Ethnic Minorities

Although Asians comprised less than 5 percent of the population, they made up approximately 40 percent of new immigrants. A marked increase in unauthorized arrivals by boat from the Middle East from 1998 to 2001 heightened public concern that "queue jumpers" and alien smugglers were abusing the country's refugee program. Leaders in the ethnic and immigrant communities continued to express concern that increased numbers of illegal arrivals and violence at migrant detention centers had contributed to incidents of vilification of immigrants and minorities.

Between February and July, several Asian businesses and a synagogue in W.A.'s capital city of Perth were firebombed or sprayed with racist graffiti. The attacks were widely condemned by political, religious, and community leaders. In August, a Perth court convicted three men, two of whom were associated with the Australian Nationalist Movement (ANM), a neo-Nazi group, for their roles in the attacks; the two ANM associates were sentenced to jail terms of 7 and 10 months respectively, and the third man received a suspended 6-month sentence. That same month, the ANM leader and suspected instigator of the attacks was arrested and charged with criminal damage to cause arson; the case was still pending at year's end.

According to the 2004 HREOC annual report, the number of racial discrimination complaints fell by 13 percent during the reporting year. Of 159 reported cases, 42 percent involved employment; 20 percent involved provision of goods, services, and facilities; and 19 percent alleged "racial hatred." Persons born outside the country filed 64 percent of the complaints, and Aboriginals and Torres Strait Islanders filed 32 percent.

#### Indigenous People

Since 1990, Aboriginals and Torres Strait Islanders have been able to participate in government decisionmaking through the Aboriginal and Torres Straits Islander Commission (ATSIC). In 2002, indigenous people elected 380 representatives to 35 regional councils and the Torres Strait Regional Authority in triennial elections. These representatives in turn choose 18 commissioners, who make up the ATSIC Board. The 2002 election had the highest voter participation since elections were first held in 1990.

In 2002, in response to continued claims of corrupt dealings by ATSIC board members, the Government initiated a

review of ATSIC's functions and operations. In November 2003, the review body issued its final report, which recommended replacing the 18-member ATSIC board with a 10-member ATSIC national executive body, with 8 members elected from among the chairs of 35 regional councils and 2 government-appointed members.

In July 2003, faced with several allegations of improper behavior, ATSIC's Deputy Chairman resigned, and the Minister for Indigenous Affairs suspended the Chairman in August 2003. The Commission elected an ATSIC Regional Councilor as Acting Chairman. In December 2003, the Chairman was found guilty on appeal of obstructing police during a pub brawl in Victoria and fined \$564 (A\$750). The ATSIC board unanimously called on the Government to lift the Chairman's suspension immediately on the ground that his conviction did not warrant his dismissal. The Minister for Indigenous Affairs indicated that the Government would not reinstate the Chairman, since it intended to abolish ATSIC. In August, the Federal Court ruled that the Government acted unlawfully when it suspended the Chairman, and the ATSIC board reelected him. The Government indicated that it would appeal the court's decision but had not done so by year's end.

On July 1, the Government transferred ATSIC's functions to federal civil service departments, and on November 6, it established the National Indigenous Council, a government-appointed 14-person advisory council, to replace ATSIC. However, by year's end, Parliament had not passed the Government's bill to abolish ATSIC; instead, the Senate initiated an inquiry to examine the administration of indigenous affairs, with a report scheduled for 2005. Also during the year, the ATSIC board took measures to mount a court challenge to the Government's administrative dissolution of ATSIC.

While some Aboriginal groups claimed that the Government's attempt to abolish ATSIC was an attempt to silence its indigenous critics, other Aboriginal groups welcomed the move as an attempt to refocus the domestic indigenous policy debate on improving health and social conditions and away from ATSIC's leadership team, which they viewed as impeding ATSIC's effectiveness.

The Government's approach toward Aboriginals emphasized a "practical reconciliation" aimed at raising the health, education, and living standards of indigenous people. A wide variety of government initiatives and programs sought to improve all aspects of Aboriginal and Torres Straits Islander life. In 2003-04, the Government spent approximately \$195 million (A\$260 million) on the indigenous-specific community housing and infrastructure program; a further \$347 million (A\$462 million) on indigenous education and training programs; \$278 million (A\$371 million) on indigenous-specific health services; and \$79 million (A\$105 million) on indigenous employment programs. However, indigenous citizens continued to experience significantly higher rates of imprisonment, inferior access to medical and educational institutions, greatly reduced life expectancy rates, higher levels of unemployment, and general discrimination, which contributed to a feeling of powerlessness. Poverty and below-average educational achievement levels contributed significantly to Aboriginal underrepresentation in national, territorial, and state political leadership (see Section 3).

According to a joint ABS and Australian Institute of Health and Welfare study released in 2003, the life expectancy of an indigenous person remained 20 years less than that of a non-indigenous person, and the indigenous infant mortality rate was 2.5 times the rates found in non-indigenous populations. In 2001, reported rates of tuberculosis and hepatitis A and B among indigenous people were, respectively, 3.7 times greater, 4.3 times greater, and 3.6 times greater than rates among the non-indigenous. According to the Department of Family and Community Services, indigenous youth were 2.5 times more likely than non-indigenous youth to leave school before graduation. The ATSIC 2002-03 annual report highlighted findings in a 2001 report that 37 percent of indigenous students did not achieve a grade 5 mathematical competency benchmark, and 33 percent of indigenous students in grade 5 were below the national reading benchmark, compared with 10 percent of the non-indigenous population against both benchmarks. The ATSIC report also noted that poor access to labor markets contributed to the high indigenous unemployment rate, which was 20 percent in 2001, almost 3 times greater than the non-indigenous unemployment rate. Unemployment rose to over 34 percent when indigenous persons given employment as part of government-assisted employment programs were included.

Although Aboriginal adults represented only 2.2 percent of the adult population, according to the ABS they accounted for approximately 20 percent of the total prison population and were imprisoned at 15 times the rate of non-indigenous people as of June 2002. More than 45 percent of Aboriginal men between the ages of 20 and 30 years had been arrested at some time in their lives. In 2001, Aboriginal juveniles accounted for 55 percent of those between the ages of 10 to 17 in juvenile correctional institutions. Human rights observers noted that socioeconomic conditions gave rise to the common precursors of indigenous crime, including unemployment, homelessness, and boredom.

Indigenous groups charged that police harassment of indigenous people, including juveniles, was pervasive and that racial discrimination by police and prison custodians persisted. Human rights groups and indigenous people

alleged a pattern of mistreatment and arbitrary arrests occurring against a backdrop of unofficial yet systemic discrimination.

On February 15, police in the Sydney suburb of Redfern clashed with a group of Aboriginals angered by the death of a 17-year-old Aboriginal youth from injuries incurred in a bicycling accident the previous day. Rioters threw bricks, bottles, and Molotov cocktails at police during the 9-hour melee, injuring approximately 40 officers. The youth's parents alleged that police were harassing him at the time of the accident; police responded that they were not chasing the youth when the accident occurred but were in the area looking for another person who was a suspect in a robbery. The police arrested 11 persons for acts committed during the incident. In August, a coroner's investigation cleared police of any involvement in the youth's death.

On November 26, hundreds of residents on Queensland's Palm Island rioted after government officials released the postmortem results on a 36-year-old indigenous man who had died in police custody after being detained for public drunkenness. The rioters destroyed the island's police station and courthouse. The postmortem results showed that the man had suffered a ruptured liver, internal bleeding, and broken ribs; the police reported that the detainee sustained the injuries during a scuffle with a police officer and a fall onto concrete steps. The coroner's report had cleared the police of responsibility in the man's death; however, the Queensland government commissioned the Crime and Misconduct Commission to investigate the case.

A 2002 W.A. inquiry into family violence and sexual abuse found that indigenous women in W.A. accounted for as many as 50 percent of all domestic violence incidents although they constituted less than 3 percent of the population. Indigenous women were 45 times more likely to be victims of violence than non-indigenous women and 10 times more likely to die as a result. In May 2003, prominent indigenous leader and former Aboriginal and Torres Strait Islander Social Justice Commissioner Mick Dodson highlighted the prevalence of domestic violence in indigenous communities and called upon indigenous men to be more accountable for the problem. In the 12 months ending June 30, the Federal Government spent approximately \$4.5 million (A\$6 million) to support 13 Family Violence Prevention Legal Service Centers in remote areas and 39 Regional Family Violence Prevention Programs. In July 2003, the federal and state governments launched a multifaceted action plan to tackle indigenous violence and announced seven priority areas for government funding, including reducing alcohol and substance abuse, increasing child safety and well being, creating safe places in the community, and promoting shared leadership. During the year, the Government allocated \$90 million (A\$120 million) over 4 years to combating child abuse and family violence in indigenous communities. A 2001 Northern Queensland study into indigenous violence found that 70 to 90 percent of all assaults were committed under the influence of alcohol or drugs. In August 2003, the Government allocated \$7.9 million (A\$10.5 million) over 4 years to help divert Aboriginals and Torres Strait Islanders from alcohol and drug abuse and \$4.6 million (A\$6.1 million) for NGO indigenous treatment programs.

In 1998, the Government established a national network of Link Up offices to provide family tracing, reunion, and other support to indigenous families separated as a result of past government practices. In the 12 months ending June 30, the Government spent \$2.8 million (A\$3.7 million) on family tracing and reunion services.

The National Native Title Tribunal resolves native land title applications through mediation. The tribunal also acts as an arbitrator in cases where the parties cannot reach agreement about proposed mining or other development of land. In 2002, ATSIC noted that the 1993 Native Title Act, as amended in 1998, provided gains for Aboriginal people but still did not address adequately the needs of native title claimants. Aboriginal leaders were pleased by the removal of a time limit for lodging native title claims but expressed deep concern about the weakening of Aboriginal rights to negotiate with non-Aboriginal leaseholders over the development of rural property. Aboriginal groups continued to express concern that the amended act limited the future ability of Aboriginal people to protect their property rights. In 2002, the High Court ruled that native title rights did not extend to mineral or petroleum resources and that, in cases where leasehold rights and native title rights were in conflict, leaseholder rights prevailed.

The \$970 million (A\$1,290 million) indigenous land fund is a special account that provides an ongoing source of funds for indigenous people to purchase land for their use. It is separate from the Native Title Tribunal and is not for payment of compensation to indigenous people for loss of land or to titleholders for return of land to indigenous people.

The NGO Aboriginal Tent Embassy in Canberra was set up in a small structure on public land opposite the Old Parliament building over 30 years ago and worked to publicize Aboriginal grievances. The tent embassy, which also encompassed an itinerants' camp, still existed at year's end, despite fire damage in 2003 and again in August and continued efforts to relocate it by the Government and some local indigenous groups, who asserted that it was not representative of the entire indigenous community. Other Aboriginal NGOs included groups working on native title issues, reconciliation, deaths in custody, and Aboriginal rights in general. International NGOs, such as AI, also

monitored and reported on indigenous issues and rights.

#### Other Societal Abuses and Discrimination

In December 2003, the N.S.W. Government released a study of violence against homosexuals, which found that more than half of the survey participants had experienced one or more forms of abuse, harassment, or violence in the previous 12 months. The report also found that two or more persons who were unknown to the victim perpetrated most incidents of harassment or violence and that homosexuals of Middle Eastern background suffered exclusion, assaults, and stalking from family or community members.

Federal and various state laws prohibit discrimination on the grounds of HIV positive status. In the 12 months ending June 30, there were no discrimination complaints lodged with the federal Disability Discrimination Commissioner, which is part of HREOC, on the grounds of HIV/AIDS status. In 2002, a La Trobe University study of HIV positive persons found that 37.7 percent received less favorable access to health services. The study also found that 22.1 percent received less favorable treatment regarding insurance, and 11.1 percent received less favorable treatment regarding accommodation.

In June, the Government enacted the Age Discrimination Act, which makes it unlawful to discriminate against persons because of their age in the areas of employment, education, accommodation, provision of services (including health services, insurance, and pensions), and the administration of federal laws and programs. The Government exempted the following areas from the law: Federal laws governing taxation, social security, migration, and private pensions; state laws; certain health programs; and youth wages or compliance with enterprise agreements and employment contracts. In June, the Government appointed the Sex Discrimination Commissioner as acting Age Discrimination Commissioner.

#### Section 6 Worker Rights

##### a. The Right of Association

The law provides workers, including public servants, the right of association domestically and internationally and protection against anti-union discrimination, and workers exercised these rights in practice. A 2003 ABS survey indicated that union membership had remained constant over the previous 12 months at 23 percent of the workforce.

Unions carried out their functions free from government or political control.

The 1996 Federal Workplace Relations Act (WRA) contains curbs on union power, restrictions on strikes (see Section 6.b.), and limits on redress and compensation claims by dismissed employees. The umbrella trade union organization, the Australian Council of Trade Unions (ACTU), has objected to the law, alleging that it violates the right to assembly provided for in several ILO conventions that the Government has signed, including ILO Convention 87 on the Freedom of Association and Protection of the Right to Organize. The primary curb on union power is the abolition of closed shops and union demarcations. This provision in theory could create many small and competing unions at the enterprise level, but thus far there have been few changes in existing union structures.

##### b. The Right to Organize and Bargain Collectively

Federal, state, and territorial laws provide workers with the right to organize and bargain collectively, and workers exercised this right in practice.

Since passage of the WRA in 1996, negotiation of contracts covering wages and working conditions shifted from the centralized awards system of the past to enterprise-level agreements certified by the Australian Industrial Relations Commission (AIRC). The WRA provides that the AIRC may certify multibusiness agreements only if they are in the "public interest." In the 12-month period ending June 30, the AIRC certified 8,549 enterprise agreements, an increase of 31 percent from the number certified in the previous 12 months. The WRA also provides for the negotiation of Australian Workplace Agreements (AWAs) between employers and individual workers, which are subject to fewer government regulations than awards or enterprise bargaining agreements; however, AWAs must improve upon the basic working conditions contained in a relevant same-sector award. The Office of the Employment Advocate received notification of 150,170 AWAs during the July 2003-June 2004 reporting period, an increase of 30 percent compared with the previous reporting period. Of the 546,885 AWAs made in the past 7 years, more than 35 percent were in retail trade, property and business services, and manufacturing industries.

Federal law first recognized an implicit right to strike in 1994. The WRA significantly restricts this right; it subjects strikers to heavy fines for taking industrial action during the life of an agreement and contains tougher secondary-boycott provisions. The WRA confines strikes to the period when unions are negotiating a new enterprise agreement and specifies that strikes must concern matters under negotiation. This is known as "protected action." Protected action provides employers, employees, and unions with legal immunity from claims of losses incurred by industrial action. In 1999, a union successfully challenged the WRA's restriction on strike action in federal court. The court refused to grant an injunction against the union for taking industrial action outside of a bargaining period because the action was in support of maintaining existing wages and conditions. The upper house of Parliament has rejected on many occasions the Government's proposed changes to the Trade Practices Act, which would provide companies with resort to legal action if they were subject to secondary boycotts.

During the year, there were no national strikes of significance, but there were short localized strikes by health-care professionals, transport workers, customs officers, and construction workers. The Bureau of Statistics reported 716 industrial disputes for the 12 months ending June 30, an increase of nearly 2 percent from the previous year; during the same period, total workdays lost due to strikes rose by 125 percent to 550,900.

During the year, the ACTU continued its efforts to increase the minimum wage, protect employee entitlements in the face of numerous company collapses, and extend family-friendly policies in the workplace. Throughout the year, unions continued a successful campaign for paid maternity leave provisions in many collective agreements.

There are no export processing zones.

#### c. Prohibition of Forced or Compulsory Labor

The law does not explicitly prohibit forced or compulsory labor, including by children; however, there were no reports that such practices occurred. Trafficking in women was a limited problem (see Section 5).

#### d. Prohibition of Child Labor and Minimum Age for Employment

There is no federally mandated minimum age of employment, but state-imposed compulsory educational requirements, enforced by state educational authorities, effectively prevented most children from joining the work force full time until they were 15 or 16 years of age. Federal and state governments monitored and enforced a network of laws, which varied from state to state, governing the minimum school-leaving age (see Section 5), the minimum age to claim unemployment benefits, and the minimum age to engage in specified occupations. The ACTU also monitored adherence to these laws.

#### e. Acceptable Conditions of Work

Although a formal minimum wage exists, it has not been directly relevant in wage agreements since the 1960s, since most workers received higher wages through enterprise agreements or individual contracts. In May, the AIRC increased the federal minimum award wage by \$14.30 (A\$19) to \$351 (A\$467.40) per week. Differing minimum wages for individual trades and professions covered approximately 80 percent of all workers; all rates provided a decent standard of living for a worker and family.

Most workers were employees of incorporated organizations. A complex body of applicable government regulations, as well as decisions of applicable federal or state industrial relations commissions, prescribe a 40-hour or shorter workweek, paid vacations, sick leave, and other benefits. The minimum standards for wages, working hours, and conditions are set by a series of "awards" (basic contracts for individual industries). In 2002, the AIRC refused the ACTU's request to set a standard for "reasonable working hours" but allowed workers to refuse without penalty to work "unreasonable" overtime.

Over the past two decades, there has been a substantial increase in the percentage of the workforce regarded as temporary workers. In 2001, there were 2.1 million persons (27 percent of the workforce) employed as casual or temporary workers, even though government statistics indicated that over 50 percent had been employed in the same job for over 12 months, and 67 percent worked regular hours. Such employees were not entitled to certain employment benefits such as sick leave or annual leave but were paid at a higher hourly wage rate.

Federal or state occupational health and safety laws apply to every workplace. The law provides federal employees with the right to cease work without endangering their future employment if they believe that particular work activities pose an immediate threat to individual health or safety. Most states and territories have laws that grant

similar rights to their employees. At a minimum, private sector employees have recourse to state health and safety commissions, which investigate complaints and demand remedial action.

Labor law protects citizens, permanent residents, and migrant workers alike. Migrant worker visas require that employers respect these protections and provide bonds to cover health insurance, worker compensation insurance, unemployment insurance, and other benefits. Past reports of abuse of foreign workers generally involved permanent residents who performed work in their homes in the clothing and construction industries. There were no such reports during the year.

There were no reports of worker rights abuses in any of the country's five dependent territories of Macquarie and Heard Islands, Christmas Island, Cocos (Keeling) Island, and Norfolk Island.